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Letter dated 18 September 2003 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council

The Governing Council of the United Nations Compensation Commission has concluded its forty-ninth session, which was held at Geneva from 16 to 18 September 2003.

During the opening plenary meeting of the forty-ninth session representatives of Kuwait, India, Saudi Arabia and Sri Lanka addressed the Council. Their respective statements are being sent by mail with the original of this letter.

During the session the Council considered eight reports and recommendations made by the Panels of Commissioners in the D, E1, E2 and E4 categories of claims. The reports on category D claims concern the review of individual claims for damages above US$ 100,000; the reports on category E1 claims concern the review of oil sector claims; the report on category E2 claims concerns the review of claims filed on behalf of non-Kuwaiti corporations and other business entities; and the reports on category E4 claims concern the review of Kuwaiti corporate claims. The Council also considered the second special report and recommendations made by the E4 and E4A Panels concerning overlapping claims, which covers 13 claims in category E4 that were re-examined in order to identify whether any overlap existed between those category E4 claims and claims in categories C and D for corporate losses related to the E4 claimant, pursuant to Governing Council decision 123. Adjustments were made to the amounts previously recommended for the E4 claims, where appropriate, with respect to the claims covered in the report. The attached tables provide details of the amounts of compensation claimed in the reports and the amounts awarded by the Governing Council, with the exception of the adjustments recommended in the special report on overlapping claims. The total amount awarded in all of the reports approved at this session is approximately $318 million.

The Governing Council considered the report of the Executive Secretary: summary of activities, covering the period from 1 May to 31 July 2003. The report covers the processing of claims, the withdrawal of claims and the payment of approved claims.

The Council discussed the arrangements for ensuring that payments are made into the Compensation Fund in the light of an information note prepared by the secretariat. The Council took note of the information provided, requested the secretariat to provide further information on this issue as it becomes available and will keep the matter on its agenda.

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The Council discussed several issues relating to the processing and payment of claims, including the twenty-second report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure, and approved corrections to certain category A, C, D and E claims.

The Council continued its discussion of the duplication of awards in categories C, D and E4. The Council noted that the duplication of awards has arisen in the following circumstances: first, duplication of awards in category D when, during the processing of an instalment of D claims, the D Panels determine that a claimant in that instalment is entitled to compensation for losses that have previously been awarded and paid to a different C or D claimant; secondly, duplication of awards in category E4 when, during the review of overlapping claims, the category E4 Panel determines that a category C or D claimant is entitled to compensation for losses that have previously been awarded to a category E4 claimant; and thirdly, when the Governing Council determines that compensation previously paid to a category E4 claimant has been reduced following the implementation of decisions on entitlements made by bilateral committees under decision 123 as applied to the awards of compensation recommended by the E4 Panels for overlapping claims.

In dealing with this issue the Council decided that payment of compensation that is determined to be duplicative shall be suspended. The Council also decided that the issue should be brought to the attention of Governments and international organizations to consider appropriate action to recover the amount of the overpayment and to return such funds to the Commission; that the payments that have been suspended may be paid as and when the corresponding overpayments are returned; that the secretariat will report periodically on the progress of recovering overpayments and releasing suspended payments between and at future sessions; and that this issue will be kept on the agenda for the next session and the Governing Council will continue to discuss the matter.

The Council continued its discussion of an archiving policy for the Compensation Commission. At the forty-sixth session, held in December 2002, the Governing Council decided that an archiving policy taking into account the particular needs of the Compensation Commission was required, and recommended that such a policy be adopted, the details of the policy remaining under review by the Working Group.

The Council noted that, as described in the secretariat's information notes dated 5 June and 21 July 2003, the records to be retained under the archiving policy fall into three groups: the first group being records with historical or precedential value; the second group being records that will be retained for a fixed period, for example the records required for audit purposes; and the third group being those records that fall under the standard United Nations archiving regime.

The Council adopted the classification of the records into the three groups described in the information notes dated 5 June and 21 July 2003 as the basis of further discussions on the archiving policy, and noted that further details of the archiving policy, particularly the question which records fall into each of the three groups and the length of time such records are to be retained, remain under review by the Working Group. The Council also requested the secretariat to provide further information concerning the costs involved for the archiving, in particular the costs of the different options for the retention of those records in the second group, and the opinion of the United Nations Controller concerning the scope of financial

records that must be retained, for the Working Group's further consideration at a future informal meeting and at the fiftieth session.

The Council considered the request made under the cover of the note verbale addressed to the secretariat of the Compensation Commission by the Permanent Mission of Iraq for the continuation of funding for the provision of technical assistance to Iraq pursuant to Governing Council decision 124 (S/AC.26/Dec.124 (2001)), in an amount not exceeding $5 million. The Council decided that an amount not exceeding $5 million be allocated for the purpose of technical assistance to Iraq in the review of the fourth and fifth instalments of F4 environmental claims, under the conditions set out in the annex to decision 124.

The Council considered two requests made by the Government of Sri Lanka at the opening plenary meeting of the session, the first being a previously made request concerning the reconsideration of 4,724 category A claims that were not recommended for payment at the time they were reviewed by the Panel of Commissioners. The Council recalled that at its forty-second session it had deferred consideration of that request to an appropriate time before the end of the claims review process, and reiterated its previous decision with respect to the request.

The second request concerned the late filing of a number of new individual claims. The Council requested the Executive Secretary to write to the Government of Sri Lanka explaining the established criteria applied by the Governing Council to assess whether late-filed claims should be accepted for filing, namely the existence of a war situation or civil disorder and evidence of a prior attempt to file the claims within the relevant filing deadlines. The Council also requested that the Government of Sri Lanka identify any claims among those contained in its request for late admission to assess whether they met those criteria and to submit supporting documentation on such claims to facilitate the Council's further consideration of the acceptability of the request. The Council further requested that the Executive Secretary, in consultation with the Government of Sri Lanka, set a suitable deadline for the Government's response to the secretariat, bearing in mind the Council's aim to resolve the issue of late-filed claims at the fiftieth session.

The Council also considered two requests made by the Government of India at the opening plenary meeting of the session, the first concerning the late filing of a number of new individual claims. To the extent that the request to submit late-filed claims concerned claims that fall within the existing criteria, the Council decided that the procedure described above with respect to the request of Sri Lanka should be applied. To the extent that the request to submit late-filed claims concerned claims that did not fall within the established criteria, and for which the Government of India had requested the Governing Council to review the existing criteria for the acceptance of late-filed claims, the Council deferred consideration of the request to an appropriate time before the end of the claims review process. The second request concerns the review of a number of duplicate claims and claims that were lost in transit between India and the Compensation Commission. The Council requested the secretariat to provide further information on this issue for the Working Group's consideration at a future informal meeting and at the fiftieth session.

The Council considered and took note of the report of the Executive Secretary on the distribution of payments and transparency, and the return of undistributed funds, and requested the secretariat to continue to inform the Council of the reports

of Governments and international organizations on the distribution of payments and the return of undistributed funds.

The Council considered the issue of the establishment of a mechanism to monitor and track the use of compensation awards in category F4 for future remediation measures in the light of a memorandum received through the Executive Secretary from the F4 Panel of Commissioners on this matter. The Council noted that the F4 Panel had stated that, if so invited by the Governing Council, it would be ready and willing to formulate proposals on the establishment and operation of a mechanism to monitor and track the use of compensation awards for future remediation measures. The Council also considered the payment of environmental damage claims in the light of Governing Council decision 197, which established a temporary payment mechanism for the payment of claims, the accompanying conclusion of the Council, and the addresses made by the Governments of Kuwait and Saudi Arabia at the opening plenary meeting of the session. The Council requested the F4 Panel of Commissioners and the secretariat to provide further information on these matters for the Working Group's further consideration at a future informal meeting and at the fiftieth session.

The Council discussed several audit-related issues. The Council further considered the recommendation made by the Board of Auditors that Governments be required to provide audit certificates that comply with national accounting standards, in order to enhance the transparency of the distribution of future payments, for payment reports submitted to the Commission, in the light of an information note prepared by the secretariat on this issue. The Council agreed upon the text of an example of an audit certificate, to which Governments may wish to refer in preparing their audit certificates. Any Government submitting an audit certificate should take into consideration the elements included in the example. The Council requested Governments to provide an audit certificate, either with the submission of each payment distribution report or annually, within three months of the end of the calendar year. The Council noted that the audit certificate would apply to reports on payments made to Governments after the current (forty-ninth) session of the Governing Council and would not apply to previous payments. The Council requested the secretariat to inform Governments and international organizations of the information set out above, to encourage Governments to provide information, on a voluntary basis, on the administrative, financial, legal and institutional arrangements made by the Governments, and to provide the example of the audit certificate for their consideration.

The Council also briefly considered the recommendations of the Board of Auditors concerning joint Office of Internal Oversight Services/Compensation Commission inspection missions and processing fees, and recommended that these matters be referred to a future informal meeting of the Working Group. The Council also considered the recommendation of the Office of Internal Oversight Services regarding the establishment of an additional audit post for that Office in the Compensation Commission, and recommended that the matter be referred to a future informal meeting of the Working Group, to be discussed in the context of the proposed budget for the biennium 2004-2005.

Finally, the Governing Council decided to hold its fiftieth session from 16 to 18 December 2003.

To date, the Commission has awarded compensation of approximately $46.6 billion, including the awards approved at the forty-ninth session, and approximately $17.8 billion of the amounts awarded have been made available to Governments and international organizations for distribution to successful claimants in all categories of claims. The payments to successful claims approved by the Council at the forty-ninth session will be made in the next round of payments, in accordance with Governing Council decision 197, scheduled to take place on 9 October 2003. The balance of the Compensation Fund at present is approximately $334 million.

(*Signed*) Michael Steiner
President of the Governing Council

Annex I

Summary of recommendations

A. Report and recommendations made by the D1 Panel of Commissioners concerning part one of the seventeenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2003/17)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Egypt	-	1	1 109 324.76	0.00
India	14	3	5 470 159.71	843 307.08
Israel	1	-	2 710 000.00	461 834.96
Jordan	83	14	50 903 415.21	11 985 519.74
Kuwait	230	1	457 770 720.16	93 829 178.17
Lebanon	5	1	1 821 672.79	722 024.09
Pakistan	11	-	7 414 251.07	2 173 118.56
Saudi Arabia	3	10	10 829 356.54	414 196.29
United Kingdom	-	1	45 627.38	0.00
United States	1	-	2 841 025.00	1 289 548.80
Yemen	1	-	551 494.43	175 705.23
Total	**349**	**31**	**541 476 047.05**	**111 894 432.92**

B. Report and recommendations made by the D2 Panel of Commissioners concerning part one of the eighteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2003/18)

Country or international organization	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Canada	2	-	2 121 988.00	412 691.55
Egypt	4	3	3 637 598.62	112 149.16
Hungary	1	-	240 230.80	97 221.81
India	7	4	14 381 518.17	4 808 787.48
Ireland	-	1	89 923.95	nil
Italy	-	1	159 579.06	nil
Jordan	63	9	190 099 949.35	11 001 626.36
Kuwait	146	-	107 989 657.80	48 853 165.98
Lebanon	10	-	6 887 053.40	2 049 060.64
Pakistan	5	-	1 240 795.85	600 104.11
Saudi Arabia	3	9	92 587 179.78	469 102.35
Spain	1	-	186 851.21	69 522.04
Sudan	-	1	750 000.00	nil

Country or international organization	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Syrian Arab Republic	16	1	7 325 801.03	1 827 301.13
Turkey	-	2	454 889.97	nil
United Kingdom	4	3	1 220 204.56	157 438.22
United States	14	2	12 910 498.94	3 736 713.94
Yemen	59	6	35 364 589.78	9 269 339.72
UNDP Kuwait	1	-	179 989.52	114 672.02
UNDP Washington	1	-	688 010.38	146 746.76
UNRWA Gaza	1	-	674 117.65	97 657.44
Total	**338**	**42**	**479 190 427.82**	**83 823 300.71**

C. Report and recommendations made by the Panel of Commissioners concerning part one of the ninth instalment of E1 claims (S/AC.26/2003/19)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Czech Republic	1	-	549 212	178 375
France	1	-	604 038	422 064
Germany	-	1	13 197 802	nil
Italy	-	2	219 395	nil
Turkey	-	1	227 337	nil
United Kingdom	3	2	822 774	251 328
United States	4	1	5 973 628	426 976
Total	**9**	**7**	**21 594 186**	**1 278 743**

D. Report and recommendations made by the Panel of Commissioners concerning part two of the ninth instalment of E1 claims (S/AC.26/2003/20)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
France	1	-	19 081 726	6 437 645
Italy	-	1	1 345 107	nil
Netherlands	-	1	6 700 000	nil
United Kingdom	4	2	2 261 267	306 369
United States	5	-	12 024 364	9 676 374
CRC-Evans Pipeline International, Inc. (claim No. 4002387)	1	-	2 497 736	932 296
Total	**11**	**4**	**43 910 200**	**17 352 684**

E. Report and recommendations made by the Panel of Commissioners concerning the fourteenth instalment of E2 claims (S/AC.26/2003/21)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Austria	1	1	4 996 942	51 371
Bahrain	2	-	4 125 730	412 470
Belgium	-	3	392 207	nil
China	2	1	46 498 380	1 087 227
Cyprus	3	4	9 047 719	987 509
Czech Republic	1	-	90 015 583	16 968
Denmark	1	4	1 926 235	6 029
Egypt	2	5	9 261 333	813 646
France	5	15	12 388 693	98 474
Germany	20	26	47 556 000	6 759 364
Greece	-	7	4 678 934	nil
Hungary	1	-	154 175	154 175
India	-	2	14 768	nil
Italy	5	3	12 708 503	966 821
Japan	4	-	2 960 785	759 646
Netherlands	1	1	259 437	4 202
Pakistan	-	2	1 222 450	nil
Republic of Korea	-	2	21 010 578	nil
Saudi Arabia	3	6	13 094 461	124 333
Singapore	-	2	382 406	nil
Spain	1	1	43 305	23 542
Switzerland	-	1	7 726 992	nil
The former Yugoslav Republic of Macedonia	-	7	11 709 540	nil
Tunisia	-	1	1 337 171	nil
Turkey	2	5	4 943 644	152 159
United Arab Emirates	-	1	15 013	nil
United Kingdom	24	39	186 572 693	3 348 221
United States	4	8	3 399 722	1 589 524
Total	**82**	**147**	**498 443 399**	**17 355 681**

F. Report and recommendations made by the Panel of Commissioners concerning the twenty-fifth instalment of E4 claims (S/AC.26/2003/22)

1. Recommended awards for non-overlapping claims

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Kuwait	113	6	80 650 765	39 802 823

2. Recommended awards for overlapping claims

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Kuwait	1	-	487 159	243 607

G. Report and recommendations made by the Panel of Commissioners concerning the twenty-sixth instalment of E4 claims (S/AC.26/2003/23)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Kuwait	132	4	92 414 675	42 361 810

Annex II

Documents of the forty-ninth session of the Governing Council

1. Report and recommendations made by the D1 Panel of Commissioners concerning part one of the seventeenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2003/17).

2. Decision concerning part one of the seventeenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/Dec.198 (2003)).

3. Report and recommendations made by the D2 Panel of Commissioners concerning part one of the eighteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2003/18).

4. Decision concerning part one of the eighteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/Dec.199 (2003)).

5. Report and recommendations made by the Panel of Commissioners concerning part one of the ninth instalment of E1 claims (S/AC.26/2003/19).

6. Decision concerning part one of the ninth instalment of E1 claims (S/AC.26/Dec.200 (2003)).

7. Report and recommendations made by the Panel of Commissioners concerning part two of the ninth instalment of E1 claims (S/AC.26/2003/20).

8. Decision concerning part two of the ninth instalment of E1 claims (S/AC.26/Dec.201 (2003)).

9. Report and recommendations made by the Panel of Commissioners concerning the fourteenth instalment of E2 claims (S/AC.26/2003/21).

10. Decision concerning the fourteenth instalment of E2 claims (S/AC.26/Dec.202 (2003)).

11. Report and recommendations made by the Panel of Commissioners concerning the twenty-fifth instalment of E4 claims (S/AC.26/2003/22).

12. Decision concerning the twenty-fifth instalment of E4 claims (S/AC.26/Dec.203 (2003)).

13. Report and recommendations made by the Panel of Commissioners concerning the twenty-sixth instalment of E4 claims (S/AC.26/2003/23).

14. Decision concerning the twenty-sixth instalment of E4 claims (S/AC.26/Dec.204 (2003)).

15. Second special report and recommendations made by the E4 and E4A Panels of Commissioners concerning overlapping claims (S/AC.26/2003/24).

16. Decision concerning the second special report on overlapping claims (S/AC.26/Dec.205 (2003)).

17. Twenty-third report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/2003/25).

18. Decision concerning corrections of awards pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/Dec.206 (2003)).